REMARKS

I. Status of the Claims

Claims 1-3, 6-12, 15-26 and 46 are pending in the application and stand rejected. Claims 7-10, 12, and 17-26 are objected to as depending from a rejected claim, but are otherwise considered allowable. Claims 1-3, 6-9, 11, 15, 16 and 46 stand rejected under 35 U.S.C. §102 over U.S. Patent 4,918,162 ("the '162 patent). The specific ground for rejection, and applicants' response thereto, are set out in detail below.

II. Interview

Applicants wish to thank the examiner for the courtesy of a telephonic interview conducted on April 5, 2006, during which the content of the '162 patent was discussed. Applicants stated that the examiner's citations to the '162 patent did not appear to provide the teachings indicated in the latest office action. The examiner stated that, upon submission of a response to the final office action, the teachings of the '162 patent would be reviewed. **Applicants respectfully request that should the examiner maintain the rejections based on the '162 patent, a telephone call to applicants' representative is requested explaining where the cited reference provides the anticipatory disclosure.**

III. Rejection Under 35 U.S.C. §102

Claims 1-3, 6-9, 11, 15, 16 and 46 stand rejected over the'162 patent. As indicated in their previous response, in the telephonic interview, and above, applicants believe that the '162 patent does not provide an anticipatory disclosure of the present claims. Thus, applicants traverse.

At the outset, applicants note that the claims are now drawn to a method of selecting a eukaryotic host cell that expresses a desired ***antibody or antibody fragment***, having the steps of obtaining ***a library of vectors*** encoding ***a plurality of distinct antibodies or antibody fragments***, expressing such ***antibodies or antibody fragments*** on the ***surface*** of a host cell, and selecting the desired ***antibody or antibody fragment***. As explained previously, and again below, the '162 patent fails to teach any of the preceding highlighted elements.

First, the '162 patent provides no disclosure of a vector library – this term cannot be found anywhere in the patent, despite the examiner providing an alleged quotation from the '162 patent that purports to use this phrase. At most, there is a discussion of differing N-myc polypeptides that ***may*** be expressed from vectors, ***but not in the context of a vector library***. More importantly, ***such N-myc polypeptides are not antibodies or antibody fragments***, and thus a discussion of N-myc expression vectors cannot anticipate the applicants' claims which recite antibody/antibody fragment vector libraries.

Second, the disclosure in the '162 patent regarding antibodies is quite general – merely providing a rehash of standard techniques by which antibodies, both polyclonal and monoclonal, are made. See columns 5-6. There is ***no*** detailed discussion of how to select antibodies of particular specificity, and there is no discussion whatsoever of a library of vectors that encode a plurality of distinct antibody (or antibody fragment) constructs. To the contrary, the '162 patent discusses antibodies only as a tool for identifying N-myc in various of the disclosed diagnostic methods – the focus of that application. Thus, the examiner seems to have missed the fact that that the subject matter of applicants' claims is ***a very particular method of selecting antibodies or fragments thereof with very particular specificity***, whereas the '162 patent simply describes using antibodies generally to screen for N-myc expression. These cannot be viewed as the same invention under any circumstances.

Third, applicants again emphasize that there is no teaching of cell surface expression in the '162 patent. The examiner cites to column 4, lines 62-68, as teaching cell surface expression. This is not true:

> The natural or synthetic DNA fragments coding for a desired N-myc fragment will be incorporated in DNA constructs capable of introduction to and expression in an *in vitro* cell culture. Usually, the DNA constructs will be suitable for replication in a unicellular host, such as yeast or bacteria, but may also be intended for introduction and integration within the genome of cultured mammalian or other eukaryotic cell lines.

Column 4, lines 62-68, and column 5, line 1. As should be clear, this passage is entirely silent on cell surface expression, much less cell surface expression of an antibody or antibody fragment (see pending claim 9). Thus, the '162 patent also fails to provide a teaching of this aspect of applicants' claims.

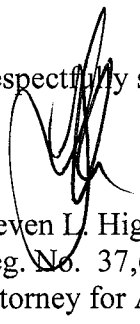
In sum, the '162 patent has almost nothing to do with the technology described in the present claims. It merely provides for production of antibodies to a particular antigen that can be used in diagnostic assays. In stark contrast, applicants' claims are drawn to a method of selecting antibodies and antibody fragments from a heterogeneous vector population of antibodies by seeking out host cells expressing the appropriate antibody or fragment. Thus, the '162 patent is not anticipatory of these claims. Reconsideration and withdrawal of the rejection is therefore respectfully requested.

IV. Conclusion

In light of the foregoing, applicants respectfully submit that all claims are in condition for allowance, and an early notice to that effect is earnestly solicited. Should the examiner have any questions, comments, or suggestions relating to this case, the examiner is invited to contact the undersigned Applicants' representative at (512) 536-3184.

Please date stamp and return the enclosed postcard evidencing receipt of this paper.

Respectfully submitted,



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